

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on February 16, 2001 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Rod Bitney, Vice Chairman (R)  
Rep. Gary Matthews, Vice Chairman (D)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Dennis Himmelberger (R)  
Rep. Carol C. Juneau (D)  
Rep. Jim Keane (D)  
Rep. Rick Laible (R)  
Rep. Bob Lawson (R)  
Rep. John Musgrove (D)  
Rep. William Price (R)  
Rep. Allen Rome (R)  
Rep. Donald Steinbeisser (R)  
Rep. Brett Tramelli (D)  
Rep. James Whitaker (R)

**Members Excused:** Rep. Roy Brown (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)

**Members Absent:** None.

**Staff Present:** Gordon Higgins, Legislative Branch  
Jane Nofsinger, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB28, HB564, HB574, HB587,  
HB589, 2/12/2001  
Executive Action: None

**HEARING ON HB574**

**Sponsor:** REP. GEORGE GOLIE HD 44, GREAT FALLS

**Proponents:** Cecelia Buckley, self

**Opponents:** Bill Gowen, MLTA  
George Bennett, Montana Bankers Assn.

**Opening Statement by Sponsor:**

REP. GEORGE GOLIE, HD44, GREAT FALLS, told the committee this bill requires persons who provide escrow services involving the transfer of real property by contract for deed to record the transfer upon completion of conditions of the contract. The bill also provides for a penalty for agents who refuse to record a deed.

**Proponents' Testimony:**

Ms. Buckley presented the committee a list of states which had this law in place. **EXHIBIT (buh39a01)** She said she had encountered many people who had their house paid in full, and had never had their deed recorded. She said waiting to record the deed often makes it a longer procedure than just getting the documents to the clerk right away.

**Opponents' Testimony:**

Mr. Gowen said that escrow companies often operate on instructions of their client. He said they tell us what to do and how to handle it.

Mr. Bennett said community banks offer escrow services. He noted this bill mandates penalties. He continued that some purchasers may not want the deed recorded right away. He said this procedure should have been left as a matter of contract. If they want disclosure, they should put that in the deed.

**Questions from Committee Members and Responses:**

REP. BOOKOUT-REINICKE asked Mr. Gowen and Mr. Bennett if the amendment allowed an exception in the contract. Mr. Gowen said maybe, but it would depend on the wording. Mr. Bennett said the purchaser may not want it recorded. The escrow agent gives it to the purchaser, then they might lose it or whatever. He said maybe they could include a statement if they want it recorded or want to opt out.

**REP. BOOKOUT-REINICKE** asked **Ms. Buckley** to explain some of the problems with recording titles. **Ms. Buckley** said people ask why the title was never filed. "Often we send the title to the individual, and they burn it with their mortgage," she said.

**REP. BITNEY** asked **Mr. Bennett** about cash sales or trust indenture, or maybe if they just wanted the deed recorded later for tax purposes. **Mr. Bennett** said it was most common for the seller to place their deed in escrow. He said the escrow agent handles the payment and then delivers it to the purchaser, purchaser's lawyer, or a financial institution. **REP. BITNEY** asked if there was a downside for the buyer. **Mr. Bennett** said the downside is for the buyer because it is to the seller's advantage to not have the deed recorded as they would still be the owner of the property.

**Closing by Sponsor:**

**REP. GEORGE GOLIE** noted 16 other states have this law. He called it a consumer bill, with special merit for the buyer. He asked the committee to move the bill forward. He added if they had a problem with the \$100 penalty, to "do something with it."

**HEARING ON HB589**

**Sponsor:** **REP. TOM FACEY, HD67, MISSOULA**

**Proponents:** **Mike Kadas, Mayor of Missoula**

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. TOM FACEY, HD67, MISSOULA,** said this is an act revising the exemptions from the subdivision and platting act for condominiums.

**Proponents' Testimony:**

**Mr. Kadas** said they want to encourage home ownership. He said land costs are high and this will allow more units to a lot. He noted the problem was not as much with the law as with an opinion by the Attorney General. He said the situation arose due to Habitat for Humanity trying to use condo law to do duplexes on a single lot. He noted that Missoula is composed of 50% rental and

50% owned homes, and this would be a way to increase home ownership.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. BITNEY** asked **Mr. Kadas** how this would change the exemptions. He said it would affect the park dedication requirement.

**Closing by Sponsor:**

**REP. FACEY** said to build condominiums is a long drawn out review, and with this bill the process jumps over the review.

***{Tape : 1; Side : B; Approx. Time Counter : 0}***

**HEARING ON HB564**

**Sponsor:** **REP. ALAN OLSON, HD8, WHEATLAND, MUSSELSHELL, YELLOWSTONE**

**Proponents:** **Geoff Feiss, Montana Telecommunications Assn.**  
**Bob Rowe, Public Service Commission**  
**Mike Strand, Montana Extended Telecommunications Sys.**  
**Russ Cravens, Quest Communications**  
**Joan Mandeville, Blackfoot Cooperative**  
**Becky Berger, Touch America**

**Opponents:** **Chuck Evilsizer, attorney for Ronan Telephone Co.**

**Opening Statement by Sponsor:**

**REP. ALAN OLSON, HD8, WHEATLAND, MUSSELSHELL, YELLOWSTONE,** said this law revises the Universal Service Telecommunications Law. It provides the Public Service Commission permission to investigate the need for a universal service fund and the authority to establish this fund.

**Proponents' Testimony:**

**Mr. Feiss** presented written testimony. **EXHIBIT (buh39a02)**

***{Tape : 1; Side : B; Approx. Time Counter : 15.6}***

**Mr. Rowe** presented written testimony. **EXHIBIT (buh39a03)**

*{Tape : 1; Side : B; Approx. Time Counter : 21}*

**Mr. Strand** said in the 1940's and 1950's rural networks were built using expensive copper line. To make service affordable for every American, the universal service fund evolved. "Now America is the envy of the rest of the rest of the world," he said. "We are able to call doctors, ambulances and police, " he said, "and this creates huge social benefits." He told the committee that the urban states did not like having to collect the tax for states like Montana, but the concept is critical to Montana.

**Mr. Cravens** said it is important to have this policy stated because if the people in New York don't pay, the people in Montana will have to.

**Ms. Mandeville** said these basic network infrastructure funds are important for Montana.

*{Tape : 2; Side : A; Approx. Time Counter : 0}*

**Ms. Berger** agreed with the other proponents and said it provides the necessary authority to the Public Service Commission to investigate and distribute the fund in a neutral manner.

**Opponents' Testimony:**

**Mr. Evilsizer** said this program is very flawed and a very bad public policy. He said he was in strong opposition to the bill. He said there are serious inequities that need to be remedied before any new type of subsidy is considered. "The law should be allowed to sunset," he said. **EXHIBIT (buh39a04)**

**Questions from Committee Members and Responses:**

**REP. BOOKOUT-REINICKE** asked **Mr. Evilsizer** how much is in the fund now. **Mr. Evilsizer** said \$45 million. **REP. BOOKOUT-REINICKE** asked how much the fee would be in Montana. **Mr. Evilsizer** said it is not specified in the bill and there is no way to replace the \$45 million. He said the other states are looking to recipients to have a plan in place to do it for themselves. **REP. BOOKOUT-REINICKE** asked if the fee is to be added to the basic local fee. **Mr. Evilsizer** replied it was an additional fee.

**REP. JUNEAU** asked **Mr. Rowe** if other states have implemented changes and was there a plan in Montana. **Mr. Rowe** said 30 states have a plan under way and there is movement underway. **REP. JUNEAU**

asked if this was the plan for \$1 month service for low income people. **Mr. Rowe** said the program does support the "lifeline."

**REP. GALLIK** asked **Mr. Rowe** with a new Congress and tax cuts on the agenda, if there was a risk of having a fund in place that would give them an out. **Mr. Rowe** replied, "Over Conrad Burns' dead body."

**REP. LAIBLE** asked **Mr. Feiss** why Ronan felt they were not getting a fair share. **Mr. Feiss** said they were because high cost support goes to high cost customers. He said Ronan was not a high cost customer as they average 20 customers per line. He said a rural average per line is 1.6 customers. Also, he pointed out that the funds could not be used for any other purpose.

**Closing by Sponsor:**

**REP. OLSON** urged the committee to pass the bill saying that, "it works and it has been proven time after time."

**HEARING ON HB587**

**Sponsor:** **REP. RICK LAIBLE, HD59, BITTERROOT**

**Proponents:** Tim Howard, Homelands Development Company  
Byron Roberts, Montana Building Industry Assn.  
Michael Kakua, attorney  
Tom Dove, self  
Peggy Trenk, Montana Assn of Realtors  
Don Allen, Western Environmental Development Assn.  
Perry Ashby, Westmont Builders; Montana Builders Assn.

**Opponents:** Jane Jenliski, Montana Assn. of Counties  
Jennifer Madjic, Gallatin County  
Bob Horne, Great Falls Planning Department  
Harold Blatti, Stillwater County  
Bob Hunter, Bozeman Civil Engineering  
Hal Fossum, City of Helena  
Mike Kadas, City of Missoula  
Steve Kirchhoff, citizen  
Tim Davis, Montana Smart Growth Coalition  
Paul Luwe, City of Bozeman  
Clark Johnson, City Manager, Bozeman

**Opening Statement by Sponsor:**

**REP. RICK LAIBLE, HD59, BITTERROOT**, said the bill sets guidelines between local government and developers. He explained the bill establishes standards, provides fairness, stimulates economic growth, and fosters cooperation between the public and private sectors. He noted the act establishes proportionality standards and requirements in conjunction with subdivision approvals.

**Proponents' Testimony:**

**Mr. Howard** told the committee of a subdivision he had developed in Big Sky on his property. He noted the subdivision was developed on his property which was raw land located on a federal highway. He said that Gallatin County assessed him an impact fee of \$1500 per dwelling unit. He said the money the county collected could be spent anywhere in the county and was not even used in the area of the subdivision. He noted all the roads in the area were federal roads, and not maintained by the county. He was told it could be used for snow removal, but he said he had thought the money had to be spent on capital improvements. He spent \$3-5,000 on a traffic study to determine the impact. The study said the impact would be 2%. He requested the fee to be lowered, but his request was denied, the fee remained at 100%, and the case was later settled out of court. He told of another subdivision he had developed near Bozeman. This subdivision was located one-half mile from a traffic signal. After he had invested nearly \$1 million, he was told he had to pay \$150,000 for the signal and split it with another developer in the area. He said, "Our impact there was less than 10%, yet we had to pay 50%." He added it is paid by us, but it really affects the price the property owners have to pay in the long run. "I'm here today, just asking to pay my fair share," he said.

**Mr. Roberts** presented two exhibits showing the economic impact of building 346 homes in Ravalli County in 2000, and how home construction pays its own way. **EXHIBIT (buh39a05)**

**EXHIBIT (buh39a06)**

***{Tape : 3; Side : A; Approx. Time Counter : 0}***

**Mr. Kakua** told the committee the term "exactions" meant any conditions placed on a subdivision to enforce police powers. He said some exactions actually violate private property rights. He said there needs to be a "nexus" or "proportionality" between what the developer wants and what the government requires. He said this bill codifies the requirements for nexus and proportionality.

**Mr. Ashby** said only 68% of Montanans are homeowners, and in Missoula the amount is only 48%. He stated that more home ownership makes an area more stable. He said if additional fees of \$3,000 are applied to an \$80,000 home, it will rule out some owners. The homes eventually become out of the range of the average American income, because these costs are added on to the consumer. He added this bill has the building industry's support.

**Mr. Dove** said he had no direct interest in this bill, but expressed support for the underlying principles of the bill.

**Mr. Wicke** said new growth should pay its fair share and no more. He explained that opponents to the bill will say this bill makes it "too tough for local government." He called the bill "procedural, not substantive." He testified that in general tax disputes, the rate is known and there are specific procedures. In special taxes, a dispute is different, he said. He continued, there is no process. Often a study is obtained to predict the impact, and then the cost is divided and everybody is told to pay a certain amount, he said.

**Ms. Trenk** said the bill will protect against the government misuse of power. She noted there is a complexity of regulations which erodes efficiency. She said there should be an accountability of local government as well as flexibility.

**Mr. Allen** said the committee should work for the protection of private property rights in all aspects. He added the process should allow for accountability of government as well as the protection of private property rights.

#### **Opponents' Testimony:**

**Ms. Jenliski** said the subjective language of the bill would open it up to litigation. She said she had a serious concern with the ½ mile limitation. She noted development can impact water, fire, and traffic for many miles. She stated the developments near Big Sky had a tremendous effect on air traffic and roads even though it was 70 miles away. She added there was no fiscal note to show how the bill would impact local government.

**Ms. Madjic** said impact fees are a good method to fairly offset the costs of development to local government. She said she had a problem with the definition of exactions and the ½ mile service area. She expressed that this would jeopardize fairness and she questioned if it would help economic growth.



**Mr. Horne** called it a "bill fraught with ill." He said Great Falls did not have impact fees, but he thought the bill should be re-crafted to codify the standards of proportionality.

**Mr. Blatti** said his county, Stillwater, was one of the fastest growing in the state. He told the committee that people cause impact, not property. He said they took a survey in 1996 asking if local taxpayers should subsidize development. He said most people answered no. He asked the committee to kill the bill if they thought developers should pay.

*{Tape : 3; Side : B; Approx. Time Counter : 0}*

**Mr. Hunter** called this bill "a back door property, sewer, and water tax increase." He said it will "put money in the pockets of developers and out of Montanan's pockets." He said it would also increase sprawl. **EXHIBIT (buh39a07)**

**Mr. Fossum** said the bill would result in higher standards and studies. He added the bill was very unlikely to achieve its intent.

**Mr. Kodos** said this bill will open "a huge can of worms and a new set of case law."

**Mr. Kirchhoff** said Gallatin County had dealt with this issue in three elections and stated the developers should pay their own way.

**Mr. Davis and Mr. Johnson** opposed the bill.

**Mr. Luwe** presented written testimony. **EXHIBIT (buh39a08)**

*{Tape : 3; Side : B; Approx. Time Counter : 14}*

Questions from Committee Members and Responses: None

Closing by Sponsor:

**REP. LAIBLE** said the bill dovetails with existing laws. He said the local governments still maintain their growth plans and zoning. He noted the developers will still pay their reasonable share of fees. He said the opponents who were concerned over the ½ mile distance failed to read the rest of the paragraph. The bill states that the governing body may overcome this distance restraint by saying in writing how the development would impact the area outside of the ½ mile. He said also the fees should be spent on the community of the development area and not across town. He said the reason he was carrying this bill was because

his wife was on the planning board and he knew what took place. He said he knew of a property with two houses and two septic systems that a senior citizen wanted to convert to 2 legal lots. The citizen went to the planning commission with the request. The citizen was told that because it was on a dirt road they would have to pave it to the nearest chip-sealed road. This expense would not be feasible for them. He concluded that the property rights of ranchers and farmers are being diminished because they will never be able to develop their land as the cost will be prohibitive. He said, "Their land is their 401K, and unless this passes, their value will erode."

***{Tape : 4; Side : A; Approx. Time Counter : 14}***

#### **HEARING ON HJR28**

**Sponsor:** REP. RICK LAIBLE, HD59, BITTERROOT

**Proponents:** Jennifer Madjic, Gallatin County

**Opponents:** None

#### **Opening Statement by Sponsor:**

REP. RICK LAIBLE, HD59, BITTERROOT, told the committee he was going to do a bill that addressed urban interface wildfunds. He said the bill started out two pages and became many pages, so he decided to make it a resolution instead. He also offered some amendments. He said the resolution was not about what homeowners have to do, but was about what they should do if they choose to. He added the resolution is what we would like to see happen.

#### **Proponents' Testimony:**

Ms. Madjic supported the resolution noting an option could be added to provide for cluster development.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** None

#### **Closing by Sponsor:**

REP. LAIBLE said the resolution was a concept resulting from the 2000 wildfires.

**ADJOURNMENT**

Adjournment: 11:20 A.M.

---

REP. JOE MCKENNEY, Chairman

---

JANE NOFSINGER, Secretary

JM/JN

**EXHIBIT** (buh39aad)